

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

Peter ASSAF et al

Serial No.: 10/555,664

Filed: November 4, 2005

For: Nitric Oxide Donors And Uses Thereof

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§Attorney
Docket: 30724Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450Attention: Rita White
PCT-National**THIRD REQUEST FOR REFUND**

Sir:

This is in response to the Denial of the \$3,200.00 Refund request for the above identified application.

In said Denial, the USPTO stated that the application filing "did not have a Preliminary Amendment addressing the claims so the Claims submitted stay".

1. While the USPTO is technically correct that the Applicant filed the application as a 35 U.S.C. 371 National Phase submission, and checked off Box 5a of PTO Form 1390 (which states a copy of the International Application as filed was being transmitted along with the filing), in fact no such copy of the International Application was submitted.

2. Rather, a new application, with only 75 claims was submitted, and the fee calculation made was based on the 75 claims included in that filing.

3. A Preliminary Amendment was submitted along with the filing, and in the Remarks section thereof, reference to "claims 1-75 appear in the application" is clearly made.

4. Moreover, the USPTO itself, in publishing the application on January 25, 2007 as US 2007/0021382, published the 75 claims submitted with the application as those filed and pending. It is respectfully urged by this action alone, the USPTO is estopped from asserting that Applicant must pay for 198 claims, while at the same time recognizing only 75 claims are pending and examinable.

Accordingly, applicant respectfully requests that a refund of \$3,200.00 be made to Deposit Account 501407 as follows:

1. The sum of \$4,450 for Fee Code 2615. This application has a total of 75 claims, (not 198 as indicated on the Filing Receipt) none of which are of a multiple dependency type. The correct quantity for Fee Code 2615 is for 55 claims (in excess of 20) at \$25 per claim. This is a total of \$1,375 as authorized by Applicant. **A refund of \$3,075** is in order.

2. The sum of \$375 for Fee Code 2681, which represents between 200-250 pages. This application contains less than 200 pages. The correct charge for Fee Code 2681 should be \$250, as authorized by Applicant. **A refund of \$125** is deemed to be in order.

A Total Refund of \$3,200 to Deposit Account 501407 is therefore deemed to be in order.

Respectfully submitted,

April 10, 2007

Martin D. Moynihan
Registration No. 40,338